

71 Am. Jur. 2d State and Local Taxation Six XIX A Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Six. Income Taxes

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Research References

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West's Key Number Digest, [Taxation](#)  [3402](#), [3403](#), [3405](#)

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A.L.R. Index, Income Taxes

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71 Am. Jur. 2d State and Local Taxation § 358

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State and Local Taxation

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Part Six. Income Taxes

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A. In General

§ 358. Nature of income tax

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3402, 3403

Income taxes are direct taxes on income for a specific period of time¹ and are based on gross or net income.² An income tax generally is regarded as being in the nature of an excise tax.³

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Footnotes

- ¹ [Twin Hills Golf & Country Club, Inc. v. Town of Forest Park](#), 2005 OK 71, 123 P.3d 5 (Okla. 2005).
As to what is income for purposes of taxation, generally, see [§ 390](#).
- ² [Powell v. Gleason](#), 50 Ariz. 542, 74 P.2d 47, 114 A.L.R. 838 (1937).
- ³ [Sims v. Ahrens](#), 167 Ark. 557, 271 S.W. 720 (1925); [Diefendorf v. Gallet](#), 51 Idaho 619, 10 P.2d 307 (1932); [Miles v. Department of Treasury](#), 209 Ind. 172, 199 N.E. 372 (1935); [General Am. Life Ins. Co. v. Bates](#), 363 Mo. 143, 249 S.W.2d 458 (1952); [Hunton v. Com.](#), 166 Va. 229, 183 S.E. 873 (1936).
The State's income tax is an excise tax on the privilege of earning income. [Canteen Corp. v. Com.](#), 818 A.2d 594 (Pa. Commw. Ct. 2003), order aff'd, 578 Pa. 504, 854 A.2d 440 (2004).
As to an excise tax, generally, see [§ 23](#).

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§ 359. Income tax as within general authority to tax

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3405

The power of a State to promulgate and enforce income tax laws is an essential attribute of sovereignty,¹ and a State's power to tax the income of its own residents is fundamental to its operation as a sovereign state.² Such power is justified by the protection, opportunities, and benefits that the State confers on the activities of individuals³ and corporations within the state.⁴ The benefits that a State confers to justify its power to tax need not be measurable but rather can be intangible.⁵

A state legislature's plenary power to legislate includes the power to levy income taxes,⁶ and a state legislature may levy a state income tax absent any state or federal constitutional provision prohibiting it from doing so.⁷ Indeed, taxation is an exclusively legislative function that can be exercised only under statutory authority and in the manner specified by statute,⁸ and the exercise of the power to tax is dependent on the existence of legislation creating the tax.⁹

CUMULATIVE SUPPLEMENT

Cases:

A failed proposal by the legislature, more than 80 years ago, to amend the constitution to provide for an income tax, was insufficient evidence to demonstrate that the state income tax was unconstitutional; it was the sovereign right of the state to tax the income of every resident, which reposed in the legislature. [Minn. Stat. Ann. §§ 290.03, 290.014\(1\)](#). [Sargent v. Commissioner of Revenue](#), 914 N.W.2d 407 (Minn. 2018).

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Footnotes

- 1 [Mandell v. Auditing Div. of Utah State Tax Com'n](#), 2008 UT 34, 186 P.3d 335 (Utah 2008).
The right to tax is a crucial attribute of sovereignty, and the legitimacy of the State's legislature to tax income is beyond dispute. [Lacey v. Indiana Dept. of State Revenue](#), 894 N.E.2d 1113 (Ind. Tax Ct. 2008).
- 2 [Tamagni v. Tax Appeals Tribunal of State](#), 91 N.Y.2d 530, 673 N.Y.S.2d 44, 695 N.E.2d 1125 (1998).
As to the intergovernmental tax immunity doctrine, in which the federal government is immune from taxation by a State unless that immunity is waived, generally, see § 143.
- 3 [Allied-Signal, Inc. v. Director, Div. of Taxation](#), 504 U.S. 768, 112 S. Ct. 2251, 119 L. Ed. 2d 533 (1992); [Huckaby v. New York State Div. of Tax Appeals](#), 6 A.D.3d 988, 776 N.Y.S.2d 125 (3d Dep't 2004), judgment aff'd, 4 N.Y.3d 427, 796 N.Y.S.2d 312, 829 N.E.2d 276 (2005).
- 4 [Allied-Signal, Inc. v. Director, Div. of Taxation](#), 504 U.S. 768, 112 S. Ct. 2251, 119 L. Ed. 2d 533 (1992).
As to the requirement that a state or local tax must be for a public purpose, see § 3.
- 5 [Lung v. O'Chesky](#), 94 N.M. 802, 617 P.2d 1317 (1980).
- 6 [Desenco, Inc. v. Akron](#), 84 Ohio St. 3d 535, 1999-Ohio-368, 706 N.E.2d 323 (1999).
A state legislature has plenary power to tax, subject only to constitutional restrictions and the will of the people expressed through elections. [Panhandle Producers & Royalty Owners Ass'n v. Oklahoma Tax Com'n](#), 2007 OK CIV APP 68, 162 P.3d 960 (Div. 1 2007).
- 7 [State v. Charron](#), 351 S.C. 319, 569 S.E.2d 388 (Ct. App. 2002).
- 8 [Grasso v. Oklahoma Tax Com'n](#), 2011 OK CIV APP 37, 249 P.3d 1258 (Div. 1 2011).
- 9 [In re Kroger Co.](#), 270 Kan. 148, 12 P.3d 889 (2000), as corrected without opinion, (Dec. 21, 2000).
Income taxes must be imposed by express statutes, and a general clause in a tax law has been construed as not imposing a tax on incomes. [Eliasberg Bros. Mercantile Co. v. Grimes](#), 204 Ala. 492, 86 So. 56, 11 A.L.R. 300 (1920).

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Part Six. Income Taxes

XIX. Introduction

A. In General

§ 360. Income tax as within covenants regarding taxes

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West's Key Number Digest

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A general covenant by a lessee, mortgagor, or other obligor to pay taxes is usually regarded as not including income taxes of the obligee¹ since an income tax is not a tax upon the particular property from which the income is derived.² The question of whether a covenant to pay taxes includes income taxes, however, depends upon the words of the covenant, the context in which they occur, and the subject matter to which they are applied.³ Income taxes may be included in such a covenant by express words or by necessary implication.⁴

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Footnotes

- 1 [Owen v. Fletcher Sav. & Trust Bldg. Co.](#), 99 Ind. App. 365, 189 N.E. 173 (1934); [Des Moines Union Ry. Co. v. Chicago Great Western Ry. Co.](#), 188 Iowa 1019, 177 N.W. 90, 9 A.L.R. 1557 (1920); [Republic Building v. Gaertner](#), 201 Ky. 509, 256 S.W. 1111, 30 A.L.R. 982 (1923); [Eastern Massachusetts St. Ry. Co. v. Boston Elevated Ry. Co.](#), 310 Mass. 659, 39 N.E.2d 647, 140 A.L.R. 506 (1942); [Brainard v. New York Cent. R. Co.](#), 242 N.Y. 125, 151 N.E. 152, 45 A.L.R. 751 (1926).
- 2 [Young v. Illinois Athletic Club](#), 310 Ill. 75, 141 N.E. 369, 30 A.L.R. 985 (1923); [Stony Brook R. Corporation v. Boston & M.R.R.](#), 260 Mass. 379, 157 N.E. 607, 53 A.L.R. 700 (1927).
- 3 [Stony Brook R. Corporation v. Boston & M.R.R.](#), 260 Mass. 379, 157 N.E. 607, 53 A.L.R. 700 (1927).
- 4 [Republic Building v. Gaertner](#), 201 Ky. 509, 256 S.W. 1111, 30 A.L.R. 982 (1923).

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§ 361. Distinguished from other taxes

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Various types of taxes may be related to, but are to be distinguished from, income taxes. For example, a tax exacted for the privilege of engaging in a particular vocation or business is a license or occupation tax rather than an income tax.¹ Even though occupation taxes may be measured by gross receipts, they are distinct from income taxes,² with a major distinction being that an occupation tax is an indirect tax while an income tax is a direct tax.³

A tax is a franchise tax rather than an income tax if it requires that the earning of the income and the exercising of the privilege of doing business in corporate form coincide before imposing tax liability.⁴ Income taxes are based on monies made while franchise taxes stem from the notion that a company should pay for the privilege of operating its business in the state.⁵ A franchise tax may be measured by a taxpayer's income without being construed as an income tax.⁶

A tax imposed on the gross receipts collected by companies engaged in the business of servicing coin-operated amusement machines is a sales tax rather than an income tax; the duty to pay such a tax is imposed on the customers while the duty to collect the tax as an agent of the city is imposed on businesses.⁷

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- ¹ [Mire v. City of Lake Charles](#), 540 So. 2d 950 (La. 1989); [Tennessee Growers, Inc. v. King](#), 682 S.W.2d 203 (Tenn. 1984); [Com. v. Werth](#), 116 Va. 604, 82 S.E. 695 (1914).

- 2 Philadelphia & S. M. S.S. Co. v. Com. of Pennsylvania, 122 U.S. 326, 7 S. Ct. 1118, 30 L. Ed. 1200 (1887);
City of Louisville v. Sebree, 308 Ky. 420, 214 S.W.2d 248 (1948).
- 3 Mire v. City of Lake Charles, 540 So. 2d 950 (La. 1989).
- 4 Reuben L. Anderson-Cherne, Inc. v. Commissioner of Taxation, 303 Minn. 124, 226 N.W.2d 611 (1975).
- 5 Mississippi State Tax Com'n v. Chevron U.S.A., Inc., 650 So. 2d 1353 (Miss. 1995).
The critical distinction between an income tax and a franchise tax is that the former is imposed to compensate
the State for benefits already received while the latter is imposed and payable in advance for the privilege of
exercising the right to do business in the state in the future. [Herschend v. Director of Revenue](#), 896 S.W.2d
458 (Mo. 1995).
- 6 Indiana Dept. of State Revenue v. Fort Wayne Nat. Corp., 649 N.E.2d 109 (Ind. 1995).
- 7 Apollo Stereo Music Co., Inc. v. City of Aurora, 871 P.2d 1206 (Colo. 1994).

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§ 362. Generally

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West's Key Number Digest, [Taxation](#)  3425

The words of an income tax statute are generally interpreted in their ordinary and accepted meaning.¹ An income tax law also is to be construed with an eye to possible constitutional limitations and as to render it constitutional where that is possible.²

The provisions of an income tax statute are not to be extended by implication beyond the clear import of the language used³ and in case of doubt are to be construed against the government and in favor of the taxpayer.⁴ Thus, a gross income tax statute must be construed most strongly against the state and in favor of the taxpayer.⁵ On the other hand, income tax deductions,⁶ exemptions,⁷ and credits⁸ are a matter of legislative grace,⁹ and such deductions,¹⁰ exemptions,¹¹ and credits¹² are strictly or narrowly construed against the taxpayer. Since the power to tax is a fundamental governmental power, its impairment should not be based upon the debatable construction of statutory language, and every reasonable doubt should be resolved against such an impairment.¹³

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- ¹ [Reinecke v. Smith](#), 289 U.S. 172, 53 S. Ct. 570, 77 L. Ed. 1109 (1933).
As to general rules of statutory construction or interpretation, see [Am. Jur. 2d, Statutes §§ 60 to 239](#).
- ² [Hutchins v. Commissioner of Corporations and Taxation](#), 272 Mass. 422, 172 N.E. 605, 71 A.L.R. 677 (1930); [State ex rel. Bolens v. Frear](#), 148 Wis. 456, 134 N.W. 673 (1912).
- ³ [Gould v. Gould](#), 245 U.S. 151, 38 S. Ct. 53, 62 L. Ed. 211 (1917).

- 4 Gould v. Gould, 245 U.S. 151, 38 S. Ct. 53, 62 L. Ed. 211 (1917).
- 5 U-Haul Intern., Inc. v. Indiana Dept. of State Revenue, 826 N.E.2d 713 (Ind. Tax Ct. 2005).
- 6 Surtees v. VFJ Ventures, Inc., 8 So. 3d 950 (Ala. Civ. App. 2008), *aff'd*, 8 So. 3d 983 (Ala. 2008); Citifinancial Retail Services Div. of Citicorp Trust Bank, FSB v. Weiss, 372 Ark. 128, 271 S.W.3d 494 (2008); Berkley v. Gavin, 253 Conn. 761, 756 A.2d 248 (2000); TPQ Inv. Corp. v. State ex rel. Oklahoma Tax Com'n, 1998 OK 13, 954 P.2d 139 (Okla. 1998).
- 7 Surtees v. VFJ Ventures, Inc., 8 So. 3d 950 (Ala. Civ. App. 2008), *aff'd*, 8 So. 3d 983 (Ala. 2008); Harper v. Tax Com'r, 199 Conn. 133, 506 A.2d 93 (1986); Iannone v. Iowa Dept. of Revenue and Finance, 641 N.W.2d 735 (Iowa 2002); TPQ Inv. Corp. v. State ex rel. Oklahoma Tax Com'n, 1998 OK 13, 954 P.2d 139 (Okla. 1998); Cudahy v. Wisconsin Dept. of Taxation, 261 Wis. 126, 52 N.W.2d 467 (1952).
- 8 TPQ Inv. Corp. v. State ex rel. Oklahoma Tax Com'n, 1998 OK 13, 954 P.2d 139 (Okla. 1998).
- 9 Midland Financial Corp. v. Wisconsin Dept. of Revenue, 116 Wis. 2d 40, 341 N.W.2d 397 (1983) (tax privileges).
- 10 Berkley v. Gavin, 253 Conn. 761, 756 A.2d 248 (2000); Potlatch Corp. v. Idaho State Tax Com'n, 128 Idaho 387, 913 P.2d 1157 (1996); City of Lynchburg v. English Const. Co., Inc., 277 Va. 574, 675 S.E.2d 197 (2009); HomeStreet, Inc. v. State, Dept. of Revenue, 166 Wash. 2d 444, 210 P.3d 297 (2009).
- 11 State, Dept. of Revenue v. OSG Bulk Ships, Inc., 961 P.2d 399 (Alaska 1998); Manufab, Inc. v. Mississippi State Tax Com'n, 808 So. 2d 947 (Miss. 2002); Blitz U.S.A., Inc. v. Oklahoma Tax Com'n, 2003 OK 50, 75 P.3d 883 (Okla. 2003), as corrected without opinion, (May 22, 2003); Steele v. Industrial Development Bd. of the Metropolitan Government of Nashville and Davidson County, 950 S.W.2d 345, 120 Ed. Law Rep. 860 (Tenn. 1997); City of Lynchburg v. English Const. Co., Inc., 277 Va. 574, 675 S.E.2d 197 (2009); Shawnee Bank, Inc. v. Paige, 200 W. Va. 20, 488 S.E.2d 20 (1997).
- 12 Manufab, Inc. v. Mississippi State Tax Com'n, 808 So. 2d 947 (Miss. 2002); Tarrant v. Department of Taxes, 169 Vt. 189, 733 A.2d 733 (1999).
- 13 Herrick v. Lindley, 59 Ohio St. 2d 22, 13 Ohio Op. 3d 13, 391 N.E.2d 729 (1979).

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§ 363. Retroactive operation

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3439](#), [3441](#)

The rule of statutory construction that a statute will not be construed to operate retroactively, unless an intent that it should so operate clearly appears from the act itself,¹ has been applied to prevent income tax statutes from having a retroactive effect.² Tax legislation, however, may be applied retroactively,³ and income tax statutes have been construed to operate retroactively where the intent that they should so operate plainly appeared.⁴

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Footnotes

- ¹ [Am. Jur. 2d, Statutes § 244.](#)
- ² [U.S. Trust Co. v. Commissioner of Corporations and Taxation](#), 299 Mass. 296, 13 N.E.2d 6 (1938).
- ³ [Peterson v. Commissioner of Revenue](#), 444 Mass. 128, 825 N.E.2d 1029 (2005).
- ⁴ [Opinion of the Justices](#), 460 A.2d 1341 (Me. 1982); [Mills v. State Board of Equalization](#), 97 Mont. 13, 33 P.2d 563 (1934); [Rivers v. State](#), 327 S.C. 271, 490 S.E.2d 261 (1997).
As to the validity of retroactive operation of income tax statutes, generally, see [§ 373](#).

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§ 364. Effect of administrative interpretation

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3425](#), [3442](#)

Tax authorities generally have the authority to make proper rules and regulations interpreting income tax statutes.¹ The interpretation placed upon income tax statutes by the officials charged with their administration is entitled to a presumption of validity,² and such interpretation or construction is accorded great weight³ by the courts where such statutes are ambiguous or of doubtful meaning.⁴ When a tax authority has only the language of the state revenue code on which to base its interpretation of a specific income tax code section, the courts will not disagree with the tax authority's interpretation if that interpretation is reasonable.⁵ If the statutes are unambiguous, however, administrative regulations that create a rule out of harmony with them are a mere nullity and will be disregarded,⁶ and an administrative interpretation that is in conflict with the plain language of the tax statute cannot be sustained.⁷ A state administrative official, in the guise of his or her expertise in interpreting income tax statutes, may not contravene the express language of the legislature⁸ and cannot add to, subtract from, or modify revenue statutes by regulation.⁹ A tax authority is not authorized to subvert a tax statute or to render statutory language meaningless.¹⁰

The approval of a prior consistent and uniform administrative interpretation of an income tax statute may be inferred from the failure of the legislature during a period of several years to change the administrative interpretation by amending the statute.¹¹ Since the courts are not bound by an administrative interpretation of income tax statutes, however, the interpretation will be taken into account only to the extent that it is supported by valid reasons where it has not grown into an established practice.¹²

CUMULATIVE SUPPLEMENT

Cases:

Chief appraiser's implementation of standard for land used to operate sheep farm to qualify as "open space" land, for appraisal purposes, which required minimum of seven acres and production of forage to support four animal units, or approximately 24 sheep, was in accordance with its statutory authority to determine degree of intensity of land use for agricultural purposes as generally accepted in area. [Tex. Tax Code Ann. §§ 23.51, 23.52\(d\)](#). [Moers v. Harris County Appraisal District, 469 S.W.3d 655 \(Tex. App. Houston 1st Dist. 2015\)](#), reh'g overruled, (Sept. 3, 2015) and rule 53.7(f) motion granted, (Nov. 13, 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [AOL LLC v. Iowa Dept. of Revenue, 771 N.W.2d 404 \(Iowa 2009\)](#); [Montana Dept. of Revenue v. American Smelting & Refining Co., 173 Mont. 316, 567 P.2d 901 \(1977\)](#); [Messner v. Dorgan, 228 N.W.2d 311 \(N.D. 1974\)](#).
- 2 [Vassilidze v. Director, Div. of Taxation, 24 N.J. Tax 278, 2008 WL 5539677 \(2008\)](#).
- 3 [General Motors Corp. v. Com., Dept. of Taxation, 268 Va. 289, 602 S.E.2d 123 \(2004\)](#).
- 4 [Philadelphia Suburban Corp. v. Com., Bd. of Finance and Revenue, 535 Pa. 298, 635 A.2d 116 \(1993\)](#); [Hunton v. Com., 166 Va. 229, 183 S.E. 873 \(1936\)](#).
- 5 [Baitis v. Department of Revenue of State, 2004 MT 17, 319 Mont. 292, 83 P.3d 1278 \(2004\)](#).
- 6 [Grady v. Commissioner of Revenue, 421 Mass. 374, 657 N.E.2d 751 \(1995\)](#).
- 7 [General Motors Corp. v. Com., Dept. of Taxation, 268 Va. 289, 602 S.E.2d 123 \(2004\)](#).
- 8 [Adler v. Director, Div. of Taxation, 20 N.J. Tax 537, 2003 WL 21643167 \(2003\)](#).
- 9 [Matteson v. Director of Revenue, State of Mo., 909 S.W.2d 356 \(Mo. 1995\)](#); [Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E.2d 837 \(1979\)](#).
The existence of a Department of Revenue rule cannot validate an action that is contrary to statutory provisions. [Southern Ry. Co. v. Taylor, 812 S.W.2d 577 \(Tenn. 1991\)](#).
- 10 [Alabama Dept. of Revenue v. Jim Beam Brands Co., Inc., 11 So. 3d 858 \(Ala. Civ. App. 2008\)](#).
- 11 [Broadway Nat. Bank of Chelsea v. Commissioner of Corporations and Taxation, 321 Mass. 25, 71 N.E.2d 607, 170 A.L.R. 112 \(1947\)](#); [Baitis v. Department of Revenue of State, 2004 MT 17, 319 Mont. 292, 83 P.3d 1278 \(2004\)](#); [Appeal of Van Dyke, 217 Wis. 528, 259 N.W. 700, 98 A.L.R. 1332 \(1935\)](#).
There was enough evidence to suggest that the legislature sanctioned the tax commission's interpretation of the income tax statute at issue where the commission's interpretation was codified and reviewed and approved by a legislative committee, and the statute was unaltered for the most part. [Canty v. Idaho State Tax Com'n, 138 Idaho 178, 59 P.3d 983 \(2002\)](#).
- 12 [Allen v. Commissioner of Corporations and Taxation, 272 Mass. 502, 172 N.E. 643, 70 A.L.R. 1299 \(1930\)](#).

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John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Six. Income Taxes


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71 Am. Jur. 2d State and Local Taxation § 365

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State and Local Taxation

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XIX. Introduction

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[Constitutionality, construction, and application of provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 A.L.R.2d 797](#)

Provisions in state income tax laws for conformity with provisions of the federal law, or the interpretation thereof, are common. A state statute may require a tax authority to follow as nearly as practicable the federal rules and regulations regarding income taxation to ensure uniformity between the manner in which the state and the federal government impose income taxes in comparable circumstances.¹ Such conformity provisions have been sustained against such objections as—

— a contention that adopting the federal method for determining taxable income deprives the state's courts of the power of construing the state's own statutes.²

— a claim that the adoption of the federal deductions is an unreasonable or arbitrary method for determining net income.³

— an argument that imposing a state income tax of a specified percentage of the federal income tax, an arrangement sometimes termed a "piggyback" income tax, and adopting by reference the federal statutes and regulations, renders the state act so uncertain in meaning and scope as to be nugatory.⁴

— an assertion that a constitutional requirement, that it shall not be sufficient to refer to any other law to fix a tax, is violated by a provision declaring net income to be adjusted gross income as computed for federal income tax purposes with certain adjustments.⁵

Some state statutes mandate tax law congruity only between federal and state law defining or measuring income.⁶ A State's adoption of the federal definition of income does not constitute a delegation of legislative authority.⁷ A state constitutional requirement that the legislature must enact no law except by bill does not preclude the state legislature from incorporating language and definitions found in the federal tax law into the state tax statute's definition of adjusted gross income.⁸ A state constitutional requirement that all taxes must be uniform, however, is violated by a state income tax statute adopting the federal personal exemptions through its use of federal taxable income for the determination of state taxable income.⁹

Observation:

United States territories frequently are subject to income tax legislation that seeks to create uniformity between the tax laws of the territory and the tax laws of the United States,¹⁰ through a mirror code taxation system, where the term "United States" is substituted for the name of the territory.¹¹ The fact that a mirror code taxation system in a territory does not always produce identical results to the Federal Internal Revenue Code does not affect the system's legal effectiveness.¹²

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Footnotes

- 1 [Kidde America, Inc. v. Director of Revenue](#), 198 S.W.3d 153 (Mo. 2006).
- 2 [Featherstone v. Norman](#), 170 Ga. 370, 153 S.E. 58, 70 A.L.R. 449 (1930).
- 3 [Featherstone v. Norman](#), 170 Ga. 370, 153 S.E. 58, 70 A.L.R. 449 (1930).
- 4 [Kuhn v. Department of Treasury](#), 15 Mich. App. 364, 166 N.W.2d 697 (1968), judgment modified on other grounds, 384 Mich. 378, 183 N.W.2d 796 (1971); [Santee Mills v. Query](#), 122 S.C. 158, 115 S.E. 202 (1922).
- 5 [City Nat. Bank of Clinton v. Iowa State Tax Commission](#), 251 Iowa 603, 102 N.W.2d 381 (1960).
- 6 [Seymour v. Department of Revenue](#), 311 Or. 254, 809 P.2d 100 (1991).
- 7 [Underwood Typewriter Co. v. Chamberlain](#), 94 Conn. 47, 108 A. 154 (1919), *aff'd*, 254 U.S. 113, 41 S. Ct. 45, 65 L. Ed. 165 (1920); [Katzenberg v. Comptroller of Treasury](#), 263 Md. 189, 282 A.2d 465 (1971).
- 8 [Buckley v. Wilkins](#), 105 Ohio St. 3d 350, 2005-Ohio-2166, 826 N.E.2d 811 (2005).
- 9 [Amidon v. Kane](#), 444 Pa. 38, 279 A.2d 53 (1971).
- 10 [Gumataotao v. Director of Dept. of Revenue and Taxation](#), 236 F.3d 1077, 48 Fed. R. Serv. 3d 866 (9th Cir. 2001).
- 11 [Johnson v. Quinn](#), 821 F.2d 212 (3d Cir. 1987); [Gumataotao v. Director of Dept. of Revenue and Taxation](#), 236 F.3d 1077, 48 Fed. R. Serv. 3d 866 (9th Cir. 2001).

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Under the Virgin Islands mirror system of taxation, the Internal Revenue Code and its regulations are adapted to Virgin Islands use and apply with equal force as in the United States. [Oelsner v. Government of Virgin Islands of U.S. ex rel. Virgin Islands Bureau of Internal Revenue](#), 294 F. Supp. 2d 689 (D.V.I. 2003). [Johnson v. Quinn](#), 821 F.2d 212 (3d Cir. 1987).

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Part Six. Income Taxes

XIX. Introduction

C. Provision in State Law for Conformity with Federal Law

§ 366. Extent to which federal law controls

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A.L.R. Library

[Constitutionality, construction, and application of provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 A.L.R.2d 797](#)

If a state's income tax law has incorporated federal income tax provisions, those provisions ordinarily should be interpreted as they are interpreted for federal income tax purposes.¹ Federal decisions interpreting federal income tax statutes are unusually strong persuasive precedent on the construction of state income tax laws that generally follow the federal statutes² and may be deemed controlling.³

In a controversy concerning state personal income taxes, federal tax laws and interpretations of those laws rendered by federal courts will be applied where the amount of state taxable income is to be determined by the provisions of the Federal Internal Revenue Code.⁴ Similarly, in determining what constitute income taxes for purposes of a state statute that defines the taxable income of a taxpayer as the taxpayer's federal taxable income modified by, inter alia, certain itemized deductions, federal law controls.⁵ On the other hand, where a state statute uses federal taxable income as a simplified starting point for calculating state income tax, federal tax law does not dictate the interpretation of state statutory adjustments thereafter made to taxable income.⁶

A statutory directive that any term used in state income tax statutes has the same meaning as when used in a comparable context in federal income tax laws does not adopt federal court interpretations of the meaning of an entire statutory section but rather merely saves state law the necessity of defining those terms already defined in federal law.⁷

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Footnotes

1 [Minkin v. Commissioner of Revenue](#), 425 Mass. 174, 680 N.E.2d 27 (1997).

2 [People v. Mojica](#), 139 Cal. App. 4th 1197, 43 Cal. Rptr. 3d 634 (2d Dist. 2006).

3 [Sanders v. Commissioner of Taxation](#), 222 Minn. 186, 23 N.W.2d 565 (1946).

4 [Baisch v. Department of Revenue](#), 316 Or. 203, 850 P.2d 1109 (1993).

5 [King v. Procter & Gamble Distributing Co.](#), 671 S.W.2d 784 (Mo. 1984).

6 [Kinney Shoe Corp. v. State By and Through Hanson](#), 552 N.W.2d 788 (N.D. 1996).

7 [Garland v. Director of Revenue](#), 961 S.W.2d 824 (Mo. 1998).

A state income tax law provision providing that any term used shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes does not mandate a passive acceptance of all federal interpretations of federal tax statutes. [Central Maine Power Co. v. Public Utilities Commission](#), 382 A.2d 302 (Me. 1978).

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Part Six. Income Taxes

XX. Constitutionality

A. In General

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West's Key Number Digest

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XX. Constitutionality

A. In General

§ 367. Generally

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3405](#), [3407](#), [3427](#)

While under both the Due Process and Commerce Clauses of the United States Constitution, a State may not, when imposing an income-based tax, tax value earned outside of its borders,¹ generally, a state-imposed income tax does not violate the Federal Constitution.² The power of a state legislature to impose an income tax is an inherent one, and a legislature may impose such a tax independent of express constitutional authority.³ Some state constitutions, however, expressly confer authority upon the legislature to tax incomes.⁴

While states have considerable discretion in formulating their income tax laws, that power must be exercised within the limits of the Federal Constitution.⁵ The practical operation of a taxation statute controls its constitutionality and not the form in which a State has cast a tax.⁶ A State's taxing of income is not an unconstitutional capitation tax.⁷

Income tax laws have been held constitutional as against various particular objections, including, among others, the objections that—

— their purpose was not public.⁸

— their title was insufficient.⁹

— they were unconstitutionally vague.¹⁰

— they unconstitutionally discriminated against foreign commerce.¹¹

— they violated constitutional guaranties of local self-government.¹²

— they violated the constitutional provision against states impairing the obligation of contracts.¹³

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Footnotes

- 1 Surtees v. VFJ Ventures, Inc., 8 So. 3d 950 (Ala. Civ. App. 2008), *aff'd*, 8 So. 3d 983 (Ala. 2008); Dow Chemical Co. v. Department of Revenue, 359 Ill. App. 3d 1, 295 Ill. Dec. 133, 832 N.E.2d 284 (1st Dist. 2005); Irving Pulp & Paper, Ltd. v. State Tax Assessor, 2005 ME 96, 879 A.2d 15 (Me. 2005); Whirlpool Properties, Inc. v. Director, Div. of Taxation, 208 N.J. 141, 26 A.3d 446 (2011); True v. Heitkamp, 470 N.W.2d 582 (N.D. 1991).
- 2 Idaho State Tax Com'n v. Payton, 107 Idaho 258, 688 P.2d 1163 (1984); Dorgan v. Kouba, 274 N.W.2d 167 (N.D. 1978).
A state income tax did not impermissibly infringe upon a taxpayer's constitutionally protected natural right to life, liberty, the pursuit of happiness, and the rewards of his or her industry. *Cogan v. State, Dept. of Revenue*, 657 P.2d 396 (Alaska 1983).
- 3 Featherstone v. Norman, 170 Ga. 370, 153 S.E. 58, 70 A.L.R. 449 (1930); *In re Kroger Co.*, 270 Kan. 148, 12 P.3d 889 (2000), as corrected without opinion, (Dec. 21, 2000); *City of New York v. State*, 94 N.Y.2d 577, 709 N.Y.S.2d 122, 730 N.E.2d 920 (2000); *Com. v. Werth*, 116 Va. 604, 82 S.E. 695 (1914).
- 4 Trefry v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917); *DeBlois v. Clark*, 764 A.2d 727 (R.I. 2001); *Alderman v. Wells*, 85 S.C. 507, 67 S.E. 781 (1910); *State v. Johnson*, 170 Wis. 218, 175 N.W. 589, 7 A.L.R. 1617 (1919).
- 5 *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
- 6 *Chase Manhattan Bank v. Gavin*, 249 Conn. 172, 733 A.2d 782 (1999).
- 7 *State v. Sinnott*, 163 N.C. App. 268, 593 S.E.2d 439 (2004).
- 8 *Appeal of Van Dyke*, 217 Wis. 528, 259 N.W. 700, 98 A.L.R. 1332 (1935).
- 9 *California Co. v. State*, 141 Colo. 288, 348 P.2d 382 (1959); *Alderman v. Wells*, 85 S.C. 507, 67 S.E. 781 (1910).
- 10 *Gunther v. Dubno*, 195 Conn. 284, 487 A.2d 1080 (1985); *Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100 (Mo. 1997); *Buckley v. Wilkins*, 105 Ohio St. 3d 350, 2005-Ohio-2166, 826 N.E.2d 811 (2005) (definition of "adjusted gross income" not unconstitutionally vague).
- 11 *World Fuel Services Corp. v. Florida Dept. of Revenue*, 23 So. 3d 1293 (Fla. Dist. Ct. App. 3d Dist. 2010).
- 12 *State ex rel. Bolens v. Frear*, 148 Wis. 456, 134 N.W. 673 (1912).
- 13 *Atlantic Coast Line R. Co. v. Phillips*, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977, 173 A.L.R. 1 (1947).

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XX. Constitutionality

A. In General

§ 368. Uniformity requirements

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West's Key Number Digest, [Taxation](#)  3428

Under some state constitutions, taxation may only be imposed on a uniform basis,¹ which means that a tax statute must be applied uniformly upon all taxpayers similarly situated² or that a state legislature cannot treat similarly situated taxpayers differently.³ Uniformity of taxation does not require that all subjects of taxation be taxed, and it does not mean universality; it only requires that taxes be uniform as to each class upon which they fall.⁴

The classification of property is valid under a state constitutional provision requiring income tax to be levied at a uniform rate upon incomes derived from the same class of property as long as it is not arbitrary or grossly oppressive, and unequal and reasonable ground exists for the classification.⁵ A tax law that falls impartially on all corporations of the same kind or class satisfies the requirement of equality and uniformity although other corporations of a different character are taxed at different rate, on different basis, or not at all.⁶ Income tax exemptions may be permissible under the uniformity requirement of a state constitution where they operate, in their over-all effect, to remedy an inequality in tax treatment.⁷

The United States Constitution imposes no restraints on a state in regard to unequal taxation.⁸

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Footnotes

¹ [Cherry Hills Farms, Inc. v. City of Cherry Hills Village](#), 670 P.2d 779 (Colo. 1983); [Byrd v. Hamer](#), 408 Ill. App. 3d 467, 347 Ill. Dec. 825, 943 N.E.2d 115 (2d Dist. 2011), appeal denied, 351 Ill. Dec. 1, 949 N.E.2d

1096 (Ill. 2011); *Filios v. Commissioner of Revenue*, 415 Mass. 806, 615 N.E.2d 933 (1993); *Smith v. New Hampshire Dept. of Revenue Admin.*, 141 N.H. 681, 692 A.2d 486 (1997); *Desenco, Inc. v. Akron*, 84 Ohio St. 3d 535, 1999-Ohio-368, 706 N.E.2d 323 (1999); *Amidon v. Kane*, 444 Pa. 38, 279 A.2d 53 (1971).

2 *Miller v. Heffernan*, 173 Conn. 506, 378 A.2d 572 (1977); *In re O'Carroll*, 1998 OK 6, 952 P.2d 45 (Okla. 1998); *Wilson v. Department of Revenue*, 302 Or. 128, 727 P.2d 614 (1986).

A statute imposing an income tax on the proceeds of a noncontributory federal military pension plan and which did not impose a tax on benefits from state and municipal retirement plans did not violate the state constitutional provision requiring that taxes be levied at a uniform rate upon incomes derived from the same class of property; the contributory and noncontributory plans had underlying differences between them, rendering their funds different kinds of property. *Filios v. Commissioner of Revenue*, 415 Mass. 806, 615 N.E.2d 933 (1993).

3 *DelGaizo v. Com.*, 8 A.3d 429 (Pa. Commw. Ct. 2010).

4 *Mid-America Television Co. v. State Tax Com'n of Missouri*, 652 S.W.2d 674 (Mo. 1983); *Opinion of the Justices*, 128 N.H. 1, 509 A.2d 734 (1986).

5 *Opinion of the Justices to the Senate*, 425 Mass. 1201, 681 N.E.2d 857 (1997).

6 *Hamich, Inc. v. State By and Through Clayburgh*, 1997 ND 110, 564 N.W.2d 640 (N.D. 1997).

7 *Peterson v. Commissioner of Revenue*, 441 Mass. 420, 806 N.E.2d 78 (2004).

8 *Jensen v. Franchise Tax Bd.*, 178 Cal. App. 4th 426, 100 Cal. Rptr. 3d 408 (2d Dist. 2009), review denied, (Jan. 21, 2010).

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XX. Constitutionality

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§ 369. Jurisdiction over corporate income sought to be taxed

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[Comment Note.—Validity, under Federal Constitution, of state tax on, or measured by, income of foreign corporation, 67 A.L.R.2d 1322](#)

Subject to an exception in the case of a foreign corporation having a commercial domicile in the taxing state,¹ a State's power to control the object of a tax marks the boundaries of the power to lay it.² Unless the activities that are the subject of the tax are carried on within the territorial limits of the taxing state by the foreign corporation sought to be taxed, that State is without jurisdiction to impose the tax, and to do so constitutes a violation of the Due Process Clause of the 14th Amendment of the United States Constitution.³ The power of a State to impose a tax on transactions within the state, however, is not affected by the mere fact that the exaction of the tax is contingent upon events occurring outside the state.⁴

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Footnotes

¹ [Memphis Natural Gas Co. v. Beeler](#), 315 U.S. 649, 62 S. Ct. 857, 86 L. Ed. 1090 (1942).

- 2 [Connecticut General Life Ins. Co. v. Johnson, 303 U.S. 77, 58 S. Ct. 436, 82 L. Ed. 673 \(1938\).](#)
- 3 [Connecticut General Life Ins. Co. v. Johnson, 303 U.S. 77, 58 S. Ct. 436, 82 L. Ed. 673 \(1938\).](#)
- As to the apportionment of income based on activities within the state, generally, see § 370.
- 4 [State of Wisconsin v. J.C. Penney Co., 311 U.S. 435, 61 S. Ct. 246, 85 L. Ed. 267, 130 A.L.R. 1229 \(1940\).](#)

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XX. Constitutionality

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§ 370. Apportionment of income

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[Comment Note.—Validity, under Federal Constitution, of state tax on, or measured by, income of foreign corporation, 67 A.L.R.2d 1322](#)

In order to be valid, a state tax on, or measured by, the income of a corporation that engages in both taxable activities within and without the taxing state must be apportioned to its activities within the state.¹ A State must provide a fair apportionment formula to tax income from interstate operations² with a basic requirement that there be some activity in the taxing state that justifies imposing the tax.³ The United States Constitution does not require the states to employ any particular method for achieving a fair apportionment of income for tax purposes⁴ or mandate the use of any particular formula.⁵ A state income tax based on a fair apportionment formula thus will not be found in violation of the Commerce Clause of the United States Constitution simply because it differs from that used by other states.⁶

An apportionment method is constitutionally permissible as long as it does not operate unreasonably and arbitrarily to attribute to the taxing state a percentage of the total income out of all appropriate proportion to the business transactions by the taxpayer in that state.⁷ Since it is practically impossible for a state to achieve a perfect apportionment of expansive, complex business

activities, rough approximation rather than precision is sufficient.⁸ A tax apportionment formula is not invalid simply because some income, which did not have its source in the taxing state, may end up being taxed by that State.⁹ Unless a palpably disproportionate result comes from an apportionment, a result that makes it patent that the taxes are levied upon interstate commerce rather than upon an intrastate privilege, honest state efforts to make apportionments will not be nullified.¹⁰ A tax apportionment formula will be struck down under the Commerce Clause if the income attributed to the State is in fact out of all appropriate proportions to the business transacted in that state¹¹ or has led to a grossly distorted result.¹²

A State seeking to tax the multistate income of a nondomiciliary corporation need not attempt to isolate the intrastate income-producing activities from the rest of the business but instead may tax the apportioned sum of the corporation's multistate business if the business is unitary.¹³ A State, however, may not tax a nondomiciliary corporation's income if it is derived from an unrelated business activity that constitutes a discrete business enterprise.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

An apportionment formula for purposes of determining income taxes must, under both the due process and commerce clauses of the federal constitution, be fair, and the first component of fairness in an apportionment formula is what might be called internal consistency, that is the formula must be such that, if applied by every jurisdiction, it would result in no more than all of the unitary business's income being taxed. [U.S.C.A. Const. Art. 1, § 8, cl. 3](#); [U.S.C.A. Const.Amend. 14](#). [Tesoro Corp. v. State, Dept. of Revenue, 312 P.3d 830 \(Alaska 2013\)](#).

Corporation business tax allocation of 50% of service fees earned by taxpayer, a credit card issuing bank, to state, using state's three-factor formula, was fair apportionment and thus did not violate commerce clause; formula was double-weighted for receipts, which if anything more closely approximated a taxpayer's activities in a state, as compared to the standard single-weighted receipts factor which had been found constitutional, and there was no serious doubt that taxpayers had utilized benefits of state for its business, including court system for collection of debt and infrastructure for payment. [U.S. Const. Art. 1, § 8, cl. 3](#); [N.J. Stat. Ann. § 54:10A-6\(B\)](#); [N.J. Admin. Code 18:7-8.10\(c\)](#). [Bank of America Consumer Card Holdings v. State of New Jersey Division of Taxation, 29 N.J. Tax 427, 2016 WL 5899786 \(2016\)](#).

Virginia's apportionment formula for taxing only that portion of a taxpayer's revenues from interstate activity that reasonably reflected the in-state component of the activity being taxed did not create a "grossly distorted" result in violation of the Due Process and Commerce Clauses of the United States Constitution; the tax imposed on corporate taxpayer's services rested upon the labor of Virginia employees who developed the product taxpayer sold, which was located in computer servers stored in Virginia. [U.S. Const. Amend. 14, § 1](#); [U.S. Const. art. 1, § 8, cl. 3](#); [Va. Code Ann. § 58.1-408](#). [Corporate Executive Board Company v. Virginia Department of Taxation, 822 S.E.2d 918 \(Va. 2019\)](#).

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Footnotes

- 1 [Northwestern States Portland Cement Co. v. State of Minn., 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421, 67 A.L.R.2d 1292 \(1959\)](#).

- 2 Union Pacific Corp. v. Idaho State Tax Com'n, 139 Idaho 572, 83 P.3d 116 (2004); Medicine Shoppe Intern., Inc. v. Director of Revenue, 75 S.W.3d 731 (Mo. 2002), as modified without opinion on denial of reh'g, (May 28, 2002).
As to formulary apportionment, generally, see §§ 478, 480, 481.
- 3 Medicine Shoppe Intern., Inc. v. Director of Revenue, 75 S.W.3d 731 (Mo. 2002), as modified without opinion on denial of reh'g, (May 28, 2002).
- 4 Irving Pulp & Paper, Ltd. v. State Tax Assessor, 2005 ME 96, 879 A.2d 15 (Me. 2005); Emerson Elec. Co. v. South Carolina Dept. of Revenue, 395 S.C. 481, 719 S.E.2d 650 (2011).
- 5 Microsoft Corp. v. Franchise Tax Bd., 39 Cal. 4th 750, 47 Cal. Rptr. 3d 216, 139 P.3d 1169 (2006).
- 6 Watlow Winona, Inc. v. Commissioner of Revenue, 495 N.W.2d 427 (Minn. 1993).
- 7 Barclays Bank Internat., Ltd. v. Franchise Tax Bd., 2 Cal. 4th 708, 8 Cal. Rptr. 2d 31, 829 P.2d 279 (1992).
- 8 International Harvester Co. v. Evatt, 329 U.S. 416, 67 S. Ct. 444, 91 L. Ed. 390 (1947).
- 9 Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008); Boston Professional Hockey Ass'n, Inc. v. Commissioner Of Revenue, 443 Mass. 276, 820 N.E.2d 792 (2005); Navistar Financial Corp. v. Tolson, 176 N.C. App. 217, 625 S.E.2d 852 (2006).
- 10 International Harvester Co. v. Evatt, 329 U.S. 416, 67 S. Ct. 444, 91 L. Ed. 390 (1947).
- 11 Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008); Boston Professional Hockey Ass'n, Inc. v. Commissioner Of Revenue, 443 Mass. 276, 820 N.E.2d 792 (2005).
- 12 Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).
- 13 MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue, 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008); Allied-Signal, Inc. v. Director, Div. of Taxation, 504 U.S. 768, 112 S. Ct. 2251, 119 L. Ed. 2d 533 (1992).
As to the taxation of unitary businesses, see §§ 479, 481.
- 14 MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue, 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008); Allied-Signal, Inc. v. Director, Div. of Taxation, 504 U.S. 768, 112 S. Ct. 2251, 119 L. Ed. 2d 533 (1992).

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Part Six. Income Taxes

XX. Constitutionality

A. In General

§ 371. Double taxation; multiple taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3435

Although the imposition of an income tax may, and frequently does, result in double taxation, at least in some indirect and limited sense, such double taxation is not necessarily unconstitutional¹ at least to the extent that the intention to impose the tax at issue is clear, and the tax imposed is free from discriminatory features.² Nothing in the United States Constitution or, specifically, the 14th Amendment prevents a State from imposing double taxation.³ Double taxation, in the context of an income tax case, however, is not favored,⁴ and a State may have a policy against double taxation⁵ or prohibit it.⁶ The dispositive inquiry in cases involving alleged double taxation is whether the two taxes are determined by separate and distinct factors,⁷ and a constitutional violation exists only if double taxation results in a lack of uniformity or offends due process or equal protection.⁸

It is not multiple taxation to levy taxes on different incidents.⁹ A resident of one municipal corporation who receives wages as a result of work and labor performed within another municipal corporation may be constitutionally taxed on such wages by both such municipal corporations, each at the lawful rate.¹⁰ The income from real estate also may be taxed although the real estate itself is also taxed.¹¹ A State, however, may not subject interstate commerce to the burden of multiple taxation.¹²

CUMULATIVE SUPPLEMENT

Cases:

Maryland's personal income tax scheme, which imposed a county income tax without a credit for similar income taxes paid by resident individual taxpayer to other states based on income earned in those states, operated as a tariff, in violation of the dormant Commerce Clause; scheme resulted in double taxation of income earned by Maryland residents outside the state, and created an incentive for taxpayers to opt for intrastate rather than interstate economic activity. [U.S.C.A. Const. Art. 1, § 8, cl. 3](#); [West's Ann.Md.Code, Tax-General, § 10-703\(a\)](#). [Comptroller of Treasury of Maryland v. Wynne](#), 135 S. Ct. 1787 (2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Illinois Cent. R. Co. v. State of Minn.](#), 309 U.S. 157, 60 S. Ct. 419, 84 L. Ed. 670 (1940).
- 2 [Sabine v. Gill](#), 229 N.C. 599, 51 S.E.2d 1 (1948).
- 3 [Idaho State Tax Com'n v. Stang](#), 135 Idaho 800, 25 P.3d 113 (2001); [Oklahoma Tax Commission v. Smith](#), 1980 OK 74, 610 P.2d 794 (Okla. 1980).
- 4 [Wood v. Deuser](#), 349 Mo. 1187, 164 S.W.2d 303 (1942).
- 5 [Comptroller of Treasury v. Blanton](#), 390 Md. 528, 890 A.2d 279 (2006).
- 6 [Opinion of the Justices](#), 123 N.H. 344, 461 A.2d 129 (1983).
- 7 [First Financial Group of New Hampshire, Inc. v. State](#), 121 N.H. 381, 430 A.2d 162 (1981).
- 8 [Commissioner of Revenue v. Richardson](#), 302 N.W.2d 23 (Minn. 1981).
- 9 [Exxon Corp. v. South Carolina Tax Commission](#), 273 S.C. 594, 258 S.E.2d 93 (1979).
- 10 [Thompson v. City of Cincinnati](#), 2 Ohio St. 2d 292, 31 Ohio Op. 2d 563, 208 N.E.2d 747 (1965).
- 11 [Diefendorf v. Gallet](#), 51 Idaho 619, 10 P.2d 307 (1932); [State ex rel. Bolens v. Frear](#), 148 Wis. 456, 134 N.W. 673 (1912).
- 12 [Northwestern States Portland Cement Co. v. State of Minn.](#), 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421, 67 A.L.R.2d 1292 (1959).

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Part Six. Income Taxes


XX. Constitutionality

A. In General

§ 372. Imports or exports

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3427](#), [3430](#)

A.L.R. Library

[Validity, under import-export clause of Federal Constitution, of state tax on corporations, 20 A.L.R.2d 152](#)

Under the United States Constitution, a State cannot lay any imposts or duties on imports or exports except with respect to such levies as may be necessary to execute its inspection laws.¹ A tax imposed by a State upon the income of a business carried on by a nonresident within its borders, however, is neither a tax upon exports nor a levying of imposts or duties within the prohibition of the Federal Constitution.² The fact that the net income of a corporate taxpayer is derived from an import or export business does not render its income immune from a state net income tax on corporations.³ While the Import-Export Clause protects from taxation any step in the import-export process and a state tax on gross receipts from stevedoring would presumably infringe on this protection, a tax on net income does not so infringe because net income is a factor far removed from the import-export process.⁴

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Footnotes

- 1 U.S. Const. art. I, § 10, cl. 2.
- 2 People ex rel. Stafford v. Travis, 231 N.Y. 339, 132 N.E. 109, 15 A.L.R. 1319 (1921).
- 3 International Elevator Co. v. Thoresen, 58 N.D. 776, 228 N.W. 192 (1929).
- 4 Com. Bd. of Finance and Revenue v. Northern Metal Co., 416 Pa. 75, 204 A.2d 467 (1964).

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Part Six. Income Taxes

XX. Constitutionality

A. In General

§ 373. Retroactive operation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3439, 3441

In the absence of an express constitutional prohibition on retroactive laws, income tax statutes may be constitutional although they have some retroactive effect,¹ and retroactivity provisions in income tax statutes, if for a short period, are generally valid.² However, where they are based on a constitutional amendment, it seems that income tax statutes may not be given a retroactive effect beyond the time when the amendment became effective.³ Furthermore, a retroactive income tax must be based on the income of a year sufficiently recent that such income may reasonably be supposed to have some bearing on the present ability of the taxpayer to pay the tax.⁴ Aside from these limitations, there is no definite and fixed period beyond which an income tax statute cannot be given a retroactive effect because whether such a statute results in a denial of due process of law because of its retroactive operation depends on the circumstances in which the particular tax is imposed.⁵

A tax may be imposed on the income of the entire current year although part of the year has elapsed when the statute is passed.⁶ Likewise, an income tax statute may be constitutional although it measures the tax by the income of the year of the last legislative session preceding that of its enactment,⁷ by the income of the most recent year for which returns are available furnishing data upon which to estimate the total amount to be collected from the tax,⁸ or by the income of a year sufficiently recent so that the income of that year may reasonably be supposed to have some bearing upon the present ability of the taxpayer to pay the tax.⁹

Under an express constitutional provision against the passage of any law retrospective in its operation, a statute cannot impose a tax on income received prior to its enactment,¹⁰ and it cannot increase¹¹ or reduce¹² the rate of tax retroactively.

The retroactive application of an income tax statute that is rationally related to a legitimate legislative purpose does not violate due process or the equal protection rights of taxpayers.¹³

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Footnotes

- 1 Welch v. Henry, 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87, 118 A.L.R. 1142 (1938).
- 2 Holly S. Clarendon Trust v. State Tax Commission, 43 N.Y.2d 933, 403 N.Y.S.2d 891, 374 N.E.2d 1242 (1978).
- 3 Appeal of Van Dyke, 217 Wis. 528, 259 N.W. 700, 98 A.L.R. 1332 (1935).
- 4 Welch v. Henry, 223 Wis. 319, 271 N.W. 68, 109 A.L.R. 508 (1937).
- 5 Welch v. Henry, 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87, 118 A.L.R. 1142 (1938).
- 6 Atlantic Coast Line R. Co. v. Doughton, 262 U.S. 413, 43 S. Ct. 620, 67 L. Ed. 1051 (1923).
- 7 Welch v. Henry, 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87, 118 A.L.R. 1142 (1938).
- 8 Welch v. Henry, 223 Wis. 319, 271 N.W. 68, 109 A.L.R. 508 (1937).
- 9 Welch v. Henry, 223 Wis. 319, 271 N.W. 68, 109 A.L.R. 508 (1937).
- 10 Smith v. Dirckx, 283 Mo. 188, 223 S.W. 104, 11 A.L.R. 510 (1920).
- 11 Smith v. Dirckx, 283 Mo. 188, 223 S.W. 104, 11 A.L.R. 510 (1920).
- 12 State ex rel. and to Use of Kolen v. Southwestern Bell Telephone Co., 316 Mo. 1008, 292 S.W. 1037 (1927).
- 13 Miller v. Johnson Controls, Inc., 296 S.W.3d 392 (Ky. 2009), cert. denied, 130 S. Ct. 3324, 176 L. Ed. 2d 1240 (2010).

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Part Six. Income Taxes

XX. Constitutionality

A. In General

§ 374. Effect of partial unconstitutionality

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3427](#)

In accord with the general rules as to the effect of partial unconstitutionality of statutes,¹ an income tax statute is not invalidated in its entirety by unconstitutional provisions that are separable from the remainder of the statute,² especially where it declares that the invalidity of any of its provisions shall not affect the remainder.³ An income tax statute, however, is invalidated in its entirety by unconstitutional provisions that are not separable from the remainder of the statute.⁴

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Footnotes

- ¹ [Am. Jur. 2d, Constitutional Law §§ 199 to 213.](#)
- ² [State ex rel. Bolens v. Frear, 148 Wis. 456, 134 N.W. 673 \(1912\).](#)
- ³ [People ex rel. Stafford v. Travis, 231 N.Y. 339, 132 N.E. 109, 15 A.L.R. 1319 \(1921\).](#)
- ⁴ [Eliasberg Bros. Mercantile Co. v. Grimes, 204 Ala. 492, 86 So. 56, 11 A.L.R. 300 \(1920\).](#)

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Part Six. Income Taxes

XX. Constitutionality

B. Classification and Discrimination

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Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3429, 3432 to 3434

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A.L.R. Index, Income Taxes

A.L.R. Index, Taxes

West's A.L.R. Digest, [Taxation](#)  3429, 3432 to 3434

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 185, 186](#)

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Part Six. Income Taxes

XX. Constitutionality

B. Classification and Discrimination

§ 375. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3429

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 185](#) (Complaint, petition, or declaration—For declaratory and injunctive relief—To enjoin assessment and collection of state income tax on domestic corporation's income derived partly outside state—Statute violates due process and equal protection by exempting domestic corporations doing business wholly outside state)

States have large leeway in making classifications for income tax purposes,¹ and the classification of incomes for taxation is a matter to be determined by the legislative branch of the government under its power to classify subjects for taxation.² A state legislature has broad powers to establish reasonable classifications in defining subjects of taxation³ and has considerable discretion to define and designate different classes of property for purposes of setting income tax rates.⁴ A state legislature may tax different classes at different rates, choose to tax only some classes and not others, and restrict classes of income against which deductions may be applied.⁵

Any classification for income tax purposes is permissible if it has a reasonable relation to a legitimate end of governmental action; the Equal Protection Clause of the 14th Amendment of the United States Constitution does not require a State to maintain

rigid rules of equal taxation, to resort to close distinctions, or to maintain a precise scientific uniformity in taxing incomes.⁶ All that is required is for an income tax classification to be valid is that there be reasonable classification and reasonable opportunity for uniform or equal incidence upon the class created.⁷ The classification of property for income tax purposes, to be reasonable, must reflect the actual underlying differences in property such that the property is not of the same kind as other property that is subjected to a different tax rate.⁸ The classification of property for income tax purposes that refers to persons engaged in a particular occupation is valid if the distinction rests on the nature of the business and the incidents that characterize the property employed therein.⁹ A taxpayer may be classified upon the reasonable basis of the type of legal organization or the amount or source of the taxpayer's income.¹⁰

Courts extend considerable deference and great latitude to the legislative creation of classifications and distinctions in tax statutes.¹¹ Classifications adopted by a state legislature will usually be upheld if there is no discrimination in favor of one as against another of the same class.¹² If the validity of a tax classification is challenged, the test is whether the classification is based upon some legitimate distinction between the classes that provides a non-arbitrary and reasonable and just basis for the difference in treatment.¹³ An invalid tax classification is one that discriminates between persons or property in like situations or which is arbitrary, illusory, or one that has no fair or substantial relation to the purpose for which it is made.¹⁴

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Footnotes

- 1 [Oklahoma Tax Commission v. Smith](#), 1980 OK 74, 610 P.2d 794 (Okla. 1980).
- 2 [Walters v. City of St. Louis, Mo.](#), 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 660 (1954).
- 3 [Continental Illinois Nat. Bank and Trust Co. of Chicago v. Lenckos](#), 102 Ill. 2d 210, 80 Ill. Dec. 81, 464 N.E.2d 1064 (1984).
- 4 [Opinion of the Justices to the Senate](#), 425 Mass. 1201, 681 N.E.2d 857 (1997).
- 5 [Opinion of the Justices to the Senate](#), 425 Mass. 1201, 681 N.E.2d 857 (1997).
- 6 [Walters v. City of St. Louis, Mo.](#), 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 660 (1954).
- 7 [Fent v. State ex rel. Oklahoma Tax Com'n](#), 2004 OK 59, 99 P.3d 241 (Okla. 2004).
- 8 [Opinion of the Justices to the Senate](#), 425 Mass. 1201, 681 N.E.2d 857 (1997).
- 9 [Opinion of the Justices to the Senate](#), 425 Mass. 1201, 681 N.E.2d 857 (1997).
- 10 [Mid-America Television Co. v. State Tax Com'n of Missouri](#), 652 S.W.2d 674 (Mo. 1983).
- 11 [Kotterman v. Killian](#), 193 Ariz. 273, 972 P.2d 606, 132 Ed. Law Rep. 938 (1999).
- 12 [State v. Johnson](#), 170 Wis. 218, 175 N.W. 589, 7 A.L.R. 1617 (1919).
- 13 [DelGaizo v. Com.](#), 8 A.3d 429 (Pa. Commw. Ct. 2010).
- 14 [Fent v. State ex rel. Oklahoma Tax Com'n](#), 2004 OK 59, 99 P.3d 241 (Okla. 2004).

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Part Six. Income Taxes

XX. Constitutionality

B. Classification and Discrimination

§ 376. Exemption to various classes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3429](#), [3432](#), [3433](#)

A State's power to grant exemptions from income taxation implies, to some extent, the power of discrimination and of classification required by the best interests of society.¹ Where the classification is reasonable, an income tax law may allow different exemptions to various classes of taxpayers or may exempt from tax particular classes of income.² If an income tax deduction applies uniformly to all subjects within the classification, constitutional equal protection requirements are satisfied, and judicial interference is not justified if it does not appear that the classification adopted is based on an invidious and unreasonable distinction with reference to the subject of the tax.³

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- ¹ [Opinion of the Justices to the Senate](#), 426 Mass. 1206, 690 N.E.2d 422 (1998); [Smith v. New Hampshire Dept. of Revenue Admin.](#), 141 N.H. 681, 692 A.2d 486 (1997).
- ² [Streight v. Ragland](#), 280 Ark. 206, 655 S.W.2d 459 (1983); [Continental Illinois Nat. Bank and Trust Co. of Chicago v. Lenkos](#), 102 Ill. 2d 210, 80 Ill. Dec. 81, 464 N.E.2d 1064 (1984); [Miles v. Department of Treasury](#), 209 Ind. 172, 199 N.E. 372 (1935).
- ³ [Oklahoma Tax Commission v. Smith](#), 1980 OK 74, 610 P.2d 794 (Okla. 1980).

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XX. Constitutionality

B. Classification and Discrimination

§ 377. Exemption of income derived from outside jurisdiction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3429](#), [3431](#), [3433](#)

A state income tax law may constitutionally include income earned from sources outside of the state in determining the tax of an individual resident¹ although such income is exempted in determining the tax of domestic corporations where the difference is reasonable in view of the policy of the law as a whole.² However, the exemption from state income tax of domestic corporations doing business wholly outside the state, while domestic corporations doing business both within and without the state are taxed on income derived from outside the state as well as on that derived from within the state, amounts to an arbitrary discrimination and is unconstitutional as denying the equal protection of the laws.³

CUMULATIVE SUPPLEMENT

Cases:

In-state residence of beneficiaries for trust that was formed in another state did not, by itself, supply the minimum connection with North Carolina to support the State's imposition of tax on trust income, and thus the State's tax as applied to the trust violated Due Process Clause; beneficiaries received no income from the trust, had no right to demand income from the trust, under which distribution of trust assets was left to trustee's absolute discretion, and had no assurance that they would eventually receive a specific share of trust income. [U.S. Const. Amend. 14](#); [N.C. Gen. Stat. Ann. § 105-160.2](#). [North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust](#), 139 S. Ct. 2213 (2019).

State's taxation on apportioned share of gain from taxpayer's sale of membership interest units in operating subsidiaries did not violate due process clauses, even though none of the entities were physically located in state, where taxpayer and

operating subsidiaries formed unitary business, taxpayer conducted business that received approximately 1% of its revenue from transactions with state customers through subsidiaries, for which taxpayer paid state income taxes, and taxpayer then sold partial interest in subsidiaries that generated income. [U.S. Const. Amend. 14](#); [Minn. Const. art. 1, § 7](#); [Minn. Stat. Ann. § 290.17\(4, 6\)](#). [YAM Special Holdings, Inc. v. Commissioner of Revenue](#), 947 N.W.2d 438 (Minn. 2020).

Statute classifying trusts as resident trusts, and thus allowing taxation of trusts' income from all sources, was unconstitutional under due process clause as applied to trusts, even though trust agreements contained choice-of-law provision stating that state law would apply to questions of law that might arise under trust agreements; during tax year at issue, all trust administration activities occurred out of state, one trustee never traveled to state, other trustee never traveled to state for any purposes related to trusts, decisions about selling trust assets were made outside of state, and all trust records for that year regarding assets and income were maintained outside of state. [U.S. Const. Amend. 14](#); [Minn. Stat. Ann. § 290.01\(7b\)\(a\)\(2\)](#). [Fielding v. Commissioner of Revenue](#), 916 N.W.2d 323 (Minn. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [§ 474.](#)
- 2 [Dunklin v. McCarroll](#), 199 Ark. 800, 136 S.W.2d 675 (1939).
- 3 [F.S. Royster Guano Co. v. Commonwealth of Virginia](#), 253 U.S. 412, 40 S. Ct. 560, 64 L. Ed. 989 (1920).

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XX. Constitutionality

B. Classification and Discrimination

§ 378. Discrimination between residents and nonresidents

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3429, 3431

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 186](#) (Answer—State income tax statute violates equal protection and privileges and immunities clauses—Discrimination against nonresidents with respect to exemptions)

The distinction between residents and nonresidents furnishes a reasonable basis of classification, and state income tax statutes may, under some circumstances, make different provisions as to nonresidents from those made as to residents without unconstitutionally discriminating against nonresidents.¹ Thus, a state income tax statute, although permitting residents to deduct their expenses and losses wherever incurred, may confine the deduction, in the case of nonresident taxpayers, to such expenses and losses as are connected with income arising from sources within the taxing state.² However, state income tax statutes that make different provisions for nonresidents from those made for residents may unconstitutionally discriminate against nonresidents, under some circumstances, as where they deny to nonresidents exemptions or deductions that are allowed to residents,³ or provide for different personal exemptions depending upon whether the taxpayer is a resident or nonresident.⁴

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Footnotes

- 1 [Travis v. Yale & Towne Mfg. Co.](#), 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920); [Shaffer v. Carter](#), 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).
- 2 [Travis v. Yale & Towne Mfg. Co.](#), 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920); [Shaffer v. Carter](#), 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).
- 3 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998) (income tax deduction for alimony paid).
- 4 [State ex rel. Haworth v. Berntsen](#), 68 Idaho 539, 200 P.2d 1007 (1948).

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Part Six. Income Taxes

XX. Constitutionality

B. Classification and Discrimination

§ 379. Discriminatory tax rates

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West's Key Number Digest, [Taxation](#)  3429, 3434

Where the classification is reasonable, income from different sources may constitutionally be taxed at different rates,¹ and such taxation is sometimes authorized by express constitutional provision.² Likewise, the income of corporations may be taxed at a different rate from that of individuals.³

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Footnotes

- 1 [Desco Products Caribbean, Inc. v. Government of Virgin Islands](#), 511 F.2d 1157 (3d Cir. 1975) (applying Virgin Islands law); [Miles v. Department of Treasury](#), 209 Ind. 172, 199 N.E. 372 (1935); [Welch v. Henry](#), 223 Wis. 319, 271 N.W. 68, 109 A.L.R. 508 (1937).
- 2 [Trefry v. Putnam](#), 227 Mass. 522, 116 N.E. 904 (1917).
- 3 [State ex rel. Bolens v. Frear](#), 148 Wis. 456, 134 N.W. 673 (1912).

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Part Six. Income Taxes


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§ 380. Progressive tax rates

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West's Key Number Digest, [Taxation](#)  3429, 3434

Income tax may be imposed at progressive or graduated rates, increasing according to the amount of the taxpayer's income.¹ As so imposed, the tax does not deny to taxpayers the equal protection of the laws,² nor does it deprive them of property without due process of law.³ Some state constitutions expressly authorize a graduated tax on incomes.⁴ On the other hand, the constitution of at least one state prohibits the adoption of a graduated income tax⁵ although this provision has been interpreted only to prevent a tax levied at different rates on different segments of income and is thus not violated by a statute taxing the income of individuals, corporations, and financial institutions at different rates.⁶

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Footnotes

- ¹ Featherstone v. Norman, 170 Ga. 370, 153 S.E. 58, 70 A.L.R. 449 (1930); Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932); State ex rel. Knox v. Gulf, M. & N.R. Co., 138 Miss. 70, 104 So. 689 (1925); Brady v. State, 80 N.Y.2d 596, 592 N.Y.S.2d 955, 607 N.E.2d 1060 (1992); Alderman v. Wells, 85 S.C. 507, 67 S.E. 781 (1910); Welch v. Henry, 223 Wis. 319, 271 N.W. 68, 109 A.L.R. 508 (1937).
- ² Alderman v. Wells, 85 S.C. 507, 67 S.E. 781 (1910); State ex rel. Bolens v. Frear, 148 Wis. 456, 134 N.W. 673 (1912).
- ³ Alderman v. Wells, 85 S.C. 507, 67 S.E. 781 (1910).
- ⁴ Alderman v. Wells, 85 S.C. 507, 67 S.E. 781 (1910); State ex rel. Bolens v. Frear, 148 Wis. 456, 134 N.W. 673 (1912).

- 5 [In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38](#), 490 Mich. 295, 806 N.W.2d 683 (2011).
- 6 [Kuhn v. Department of Treasury](#), 15 Mich. App. 364, 166 N.W.2d 697 (1968), judgment modified on other grounds, 384 Mich. 378, 183 N.W.2d 796 (1971).

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A.L.R. Index, Profits or Income

A.L.R. Index, Taxes

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Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 183, 184](#)

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Part Six. Income Taxes

XX. Constitutionality

C. Taxation of Particular Income

§ 381. Taxation of income of foreign corporations

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[Comment Note.—Validity, under Federal Constitution, of state tax on, or measured by, income of foreign corporation, 67 A.L.R.2d 1322](#)

A State may impose taxes on foreign corporations to the extent that the taxes bear a fiscal relation to the protection, opportunities, and benefits provided by the State.¹ For a State to be able to constitutionally tax the multistate income of a nondomiciliary, or foreign, corporation, there must be a minimal connection between the interstate activities of the corporation and the taxing state, and there must be a rational relation between the income attributed to the taxing state and the intrastate value of the corporate business.² The connection must be to the activity itself rather than only to the actors whom the State seeks to tax.³ A State may only tax that part of a foreign corporation's income that has a nexus with the taxing state.⁴

The nexus between a foreign corporation's interstate activities and the taxing state that is required for a state to tax income generated in interstate commerce is supplied if the foreign corporation avails itself of the substantial privilege of carrying on business within the taxing state.⁵ The fact that a tax is contingent upon events brought to pass without the state does not destroy the nexus between such a tax and transactions within the state for which the tax is an exaction.⁶ The nexus requirement can

be satisfied even when the corporation does not have a physical presence in the taxing state if the corporation has purposely directed its activity at the state's economic forum,⁷ such as by the foreign corporation continuously and systematically engaging in direct mail and telephone solicitation and promotion in the taxing state and having significant gross receipts attributable to customers in the taxing state.⁸ The presence of intangible property within a state also is sufficient to provide a nexus between the State imposing the income tax and a foreign corporate taxpayer and to sustain taxation.⁹ Thus, a physical presence is not required in order for a state legislature to impose an income tax on revenue earned by an out-of-state corporation arising from the use of its intangibles by franchisees located within the taxing state.¹⁰

Observation:

A State, or political subdivision thereof, pursuant to federal statute, may not impose a net income tax on income derived within the state from interstate commerce if the only business activity within the state is the solicitation of orders for sales of tangible personal property, subject to acceptance outside the state and to be filled by shipment or delivery from a point outside the state.¹¹ This statutory provision does not make certain income tax-exempt but rather prevents a State from exercising jurisdiction over a business engaged in interstate commerce when its only contact with the state is conducting a mail-order operation from outside the state's boundaries.¹² It protects the mechanics of solicitation, but not all activities that may happen to make solicitation more successful, and when the activities of a foreign corporation exceed the solicitation of orders in a state, the foreign corporation may be subject to taxation by that state.¹³ It is the nature of a foreign corporation's business activities in a state, rather than the frequency of visits or volume of sales there, that are used to determine whether the activities exceed mere solicitation and provide a sufficient nexus for income taxation by the state.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Due process requires that, before a state can tax a business based outside the state, the outside business have a minimal connection between the interstate activities and the taxing state, and a rational relationship between the income attributed to the state and the intrastate values of the enterprise. [U.S.C.A. Const.Amend. 14. Gore Enterprise Holdings, Inc. v. Comptroller of Treasury, 437 Md. 492, 87 A.3d 1263 \(2014\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [District of Columbia v. Chase Manhattan Bank, 689 A.2d 539 \(D.C. 1997\).](#)
- 2 [Hunt-Wesson, Inc. v. Franchise Tax Bd. of Cal., 528 U.S. 458, 120 S. Ct. 1022, 145 L. Ed. 2d 974 \(2000\); Zebra Technologies Corp. v. Topinka, 344 Ill. App. 3d 474, 278 Ill. Dec. 860, 799 N.E.2d 725 \(1st Dist. 2003\), as modified without opinion on denial of reh'g, \(Oct. 27, 2003\).](#)

- 3 Allied-Signal, Inc. v. Director, Div. of Taxation, 504 U.S. 768, 112 S. Ct. 2251, 119 L. Ed. 2d 533 (1992).
- 4 Bridges v. Autozone Properties, Inc., 900 So. 2d 784 (La. 2005).
- 5 Mobil Oil Corp. v. Commissioner of Taxes of Vermont, 445 U.S. 425, 100 S. Ct. 1223, 63 L. Ed. 2d 510 (1980); Dow Chemical Co. v. Department of Revenue, 359 Ill. App. 3d 1, 295 Ill. Dec. 133, 832 N.E.2d 284 (1st Dist. 2005); Whirlpool Properties, Inc. v. Director, Div. of Taxation, 208 N.J. 141, 26 A.3d 446 (2011).
- 6 Mobil Oil Corp. v. Commissioner of Taxes of Vermont, 445 U.S. 425, 100 S. Ct. 1223, 63 L. Ed. 2d 510 (1980); Whirlpool Properties, Inc. v. Director, Div. of Taxation, 208 N.J. 141, 26 A.3d 446 (2011).
- 7 Geoffrey, Inc. v. South Carolina Tax Com'n, 313 S.C. 15, 437 S.E.2d 13 (1993).
- 8 Tax Com'r of State v. MBNA America Bank, N.A., 220 W. Va. 163, 640 S.E.2d 226 (2006).
- 9 Geoffrey, Inc. v. Commissioner of Revenue, 453 Mass. 17, 899 N.E.2d 87 (2009); Geoffrey, Inc. v. South Carolina Tax Com'n, 313 S.C. 15, 437 S.E.2d 13 (1993).
- A foreign corporation, which licenses trademarks and trade names to affiliated retailers that operate stores in the taxing state, and which receives significant royalties from the use of its trademarks and trade names in the state, has a substantial nexus with the taxing state to justify the imposition of corporate income tax on its net income derived in the state. Bridges, Secretary of Dept. of Revenue, State v. Geoffrey, Inc., 984 So. 2d 115 (La. Ct. App. 1st Cir. 2008), writ denied, 978 So. 2d 370 (La. 2008).
- 10 KFC Corp. v. Iowa Dept. of Revenue, 792 N.W.2d 308 (Iowa 2010), cert. denied, 132 S. Ct. 97, 181 L. Ed. 2d 26 (2011).
- 11 15 U.S.C.A. § 381(a).
- 12 Arizona Dept. of Revenue v. Central Newspapers, Inc., 222 Ariz. 626, 218 P.3d 1083 (Ct. App. Div. 1 2009), review denied, (May 20, 2010).
- 13 Alcoa Bldg. Products, Inc. v. Commissioner Of Revenue, 440 Mass. 224, 797 N.E.2d 357 (2003).
- 14 U.S. Tobacco Co. v. Martin, 304 Ark. 119, 801 S.W.2d 256 (1990).

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Part Six. Income Taxes

XX. Constitutionality

C. Taxation of Particular Income

§ 382. Taxation of income of nonresident individuals

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[Validity of municipal ordinance imposing income tax or license upon nonresidents employed in taxing jurisdiction \(commuter tax\)](#), 48 A.L.R.3d 343

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 183](#) (Complaint, petition, or declaration—For declaratory and injunctive relief—To enjoin enforcement of municipal ordinance imposing income tax on nonresidents employed in municipality—Ordinance denies equal protection by improper allocation of costs of services)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 184](#) (Complaint, petition, or declaration—For declaratory and injunctive relief—To enjoin enforcement and declare invalidity of municipal ordinance imposing income tax on nonresidents employed in municipality (commuter tax)—Class action by counties on behalf of residents subject to tax)

A State may not constitutionally tax the income of nonresident individuals from sources outside of the state,¹ but a State is not constitutionally prohibited from taxing in-state income earned by out-of-state individuals.² A State, therefore, may constitutionally tax nonresident individuals on income earned within the state³ or their income derived from sources within the state.⁴ A nonresident individual thus may be subjected to state taxation on royalty income attributable to oil or gas production from property located in the taxing state⁵ or on income from an intangible where the capital which produces the income is in the taxing state.⁶ Similarly, a nonresident shareholder may be subjected to state taxation on the income that he or she receives through the sale of an S corporation's assets where the corporation is a resident of the taxing state⁷ or does all its business in the taxing state.⁸

State statutes or municipal ordinances imposing a tax upon the income of nonresident individuals earned or accruing within the taxing state or municipality have been upheld as against constitutional challenges based on the Due Process Clause,⁹ the Privileges and Immunities Clause,¹⁰ the Equal Protection Clause,¹¹ and the Commerce Clause¹² so long as similarly situated residents and nonresidents are treated the same.¹³ A state income tax under which nonresidents are taxed on income earned in the taxing state, while residents living in the taxing state are taxed neither on their domestic nor their foreign income, however, is unconstitutional under the Privileges and Immunities Clause.¹⁴ Furthermore, a municipal statute that rescinds a tax on the earnings of state residents who work in the taxing city but live outside the city, while retaining the tax for out-of-state residents who work in the city, violates the Privileges and Immunities Clause because it plainly discriminates against nonresidents, and the discrimination is so great that both its purpose and effect are exclusionary.¹⁵ Such a statute also violates the Commerce Clause because it facially discriminates against nonresident commuters and favors intrastate economic activity over interstate activity by taxing only out-of-state workers.¹⁶

Observation:

A State, pursuant to a federal statute,¹⁷ cannot levy state and local income taxes against members of Congress from states other than the taxing state who reside in the taxing state for purpose of attending sessions of Congress.¹⁸

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Footnotes

- 1 [State v. Thompson](#), 2008 ME 166, 958 A.2d 887 (Me. 2008); [Marshall v. Com.](#), 2012 WL 8704 (Pa. Commw. Ct. 2012).
- 2 [Frey v. Comptroller of Treasury](#), 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012).
- 3 [Arnold v. Berra](#), 366 S.W.2d 321 (Mo. 1963).
- 4 [Zelinsky v. Tax Appeals Tribunal of State](#), 1 N.Y.3d 85, 769 N.Y.S.2d 464, 801 N.E.2d 840 (2003).
- 5 [In re Income Tax Protest of Alani](#), 2006 OK CIV APP 54, 135 P.3d 828 (Div. 2 2005).
- 6 [Milhous v. Franchise Tax Bd.](#), 131 Cal. App. 4th 1260, 32 Cal. Rptr. 3d 640 (4th Dist. 2005).

- 7 Prince v. State Dept. of Revenue, 55 So. 3d 273 (Ala. Civ. App. 2010), cert. denied, 55 So. 3d 287 (Ala. 2010).
- 8 Mandell v. Auditing Div. of Utah State Tax Com'n, 2008 UT 34, 186 P.3d 335 (Utah 2008).
- 9 Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920); Arnold v. Berra, 366 S.W.2d 321 (Mo. 1963).
- 10 American Commuters Ass'n v. Levitt, 405 F.2d 1148 (2d Cir. 1969); Brady v. State, 80 N.Y.2d 596, 592 N.Y.S.2d 955, 607 N.E.2d 1060 (1992); WKBH Television, Inc. v. Wisconsin Dept. of Revenue, 75 Wis. 2d 557, 250 N.W.2d 290 (1977).
- 11 American Commuters Ass'n v. Levitt, 405 F.2d 1148 (2d Cir. 1969); Brady v. State, 80 N.Y.2d 596, 592 N.Y.S.2d 955, 607 N.E.2d 1060 (1992).
- 12 Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920); Stelzner v. Commissioner of Revenue, 621 N.W.2d 736 (Minn. 2001).
- 13 Brady v. State, 80 N.Y.2d 596, 592 N.Y.S.2d 955, 607 N.E.2d 1060 (1992).
A special nonresident tax, which imposes on nonresidents who have a source of income in the state, in addition to the state income tax, an income tax equal to the lowest county tax rate available during the applicable tax year, is not unconstitutional where residents must pay a similar county tax. [Frey v. Comptroller of Treasury](#), 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012).
- 14 Austin v. New Hampshire, 420 U.S. 656, 95 S. Ct. 1191, 43 L. Ed. 2d 530 (1975).
- 15 City of New York v. State, 94 N.Y.2d 577, 709 N.Y.S.2d 122, 730 N.E.2d 920 (2000).
- 16 City of New York v. State, 94 N.Y.2d 577, 709 N.Y.S.2d 122, 730 N.E.2d 920 (2000).
- 17 4 U.S.C.A. § 113.
- 18 U.S. v. State of Md., 636 F.2d 73 (4th Cir. 1980).

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Part Six. Income Taxes

XX. Constitutionality

C. Taxation of Particular Income

§ 383. Taxation of trust income with foreign elements

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[State tax on trust income as affected by foreign elements](#), 5 A.L.R.3d 606

It generally has been recognized that a State has jurisdiction to tax trust income with foreign elements where the state has sufficient contacts with such income¹ or with the trust.² Certain elements of a trust may be so closely connected with a particular state that despite the presence of foreign elements, the trust income may be said to fall within the State's protection of, and the right to tax, the production of the income, the receipt of the income, or the enjoyment of the income.³ If a particular state has sufficient contacts, or a sufficient nexus, with the income of a trust, the State may constitutionally tax that income even if the same income has also been taxed by another state.⁴

A State has, and may constitutionally exercise, the jurisdiction to tax its own residents on the income that they receive as trust beneficiaries regardless of the presence of foreign elements, such as nonresident trustees,⁵ nonresident settlors,⁶ the location of the trust assets in a foreign state,⁷ or the administration of the trust in a foreign state.⁸ Furthermore, except for certain testamentary trusts having such foreign elements as nonresident settlors, judicial administration in a foreign state, a nonresident majority of trustees, and a foreign situs so that the resident trustees could not constitutionally be held taxable on the trust

income,⁹ a State has, and may constitutionally exercise, the jurisdiction to tax its resident trustees on the income of a trust despite the presence of various foreign elements.¹⁰

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Footnotes

- 1 [Guaranty Trust Co. of N.Y. v. Com. of Va., 305 U.S. 19, 59 S. Ct. 1, 83 L. Ed. 16 \(1938\).](#)
- 2 [District of Columbia v. Chase Manhattan Bank, 689 A.2d 539 \(D.C. 1997\).](#)
- 3 [Guaranty Trust Co. of N.Y. v. Com. of Va., 305 U.S. 19, 59 S. Ct. 1, 83 L. Ed. 16 \(1938\).](#)
- 4 [Guaranty Trust Co. of N.Y. v. Com. of Va., 305 U.S. 19, 59 S. Ct. 1, 83 L. Ed. 16 \(1938\).](#)
- 5 [Guaranty Trust Co. of N.Y. v. Com. of Va., 305 U.S. 19, 59 S. Ct. 1, 83 L. Ed. 16 \(1938\); Maguire v. Trefry, 253 U.S. 12, 40 S. Ct. 417, 64 L. Ed. 739 \(1920\); McCulloch v. Franchise Tax Bd., 61 Cal. 2d 186, 37 Cal. Rptr. 636, 390 P.2d 412 \(1964\); Middlekauff v. Galloway, 163 Or. 671, 99 P.2d 24 \(1940\).](#)
- 6 [Guaranty Trust Co. of N.Y. v. Com. of Va., 305 U.S. 19, 59 S. Ct. 1, 83 L. Ed. 16 \(1938\).](#)
- 7 [Guaranty Trust Co. of N.Y. v. Com. of Va., 305 U.S. 19, 59 S. Ct. 1, 83 L. Ed. 16 \(1938\).](#)
- 8 [Guaranty Trust Co. of N.Y. v. Com. of Va., 305 U.S. 19, 59 S. Ct. 1, 83 L. Ed. 16 \(1938\).](#)
- 9 [Hutchins v. Commissioner of Corporations and Taxation, 272 Mass. 422, 172 N.E. 605, 71 A.L.R. 677 \(1930\).](#)
- 10 [Harvard Trust Co. v. Commissioner of Corporations and Taxation, 284 Mass. 225, 187 N.E. 596 \(1933\); State ex rel. Wisconsin Trust Co. v. Widule, 164 Wis. 56, 159 N.W. 630 \(1916\).](#)

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Part Six. Income Taxes

XXI. Exempt Income and Taxpayers

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XXI. Exempt Income and Taxpayers

§ 384. Generally

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A common characteristic of income tax legislation is a provision for the exemption of certain income and taxpayers since the power to fairly exempt is inherent in the legislative power to tax.¹ Inasmuch as income tax exemptions exist by virtue of the grace of the legislature,² their existence is not to be easily implied.³ The burden is on the taxpayer to establish the right to an exemption,⁴ and an exemption from taxation will not be found unless the terms under which it is claimed clearly and distinctly show that such was the intention of the legislature.⁵ A taxpayer seeking an exemption thus is required to establish that the claimed exemption is unmistakably within the spirit and intent of the income tax statute.⁶ Doubts concerning the applicability of the exemptions will be resolved in favor of taxation.⁷

By federal statute, interest from obligations of the United States is exempt from state income taxation.⁸ A federally chartered instrumentality of the United States, however, is not exempt from state income taxation unless Congress expressly provides for it.⁹

Observation:

Exemptions under income tax statutes may be reciprocal between states, and in order for a citizen of another state to be exempt from income tax under a law that provides that a citizen of another state that levied an income tax will be exempt if the state of which he or she is a citizen extends the same exemption to citizens of the taxing state, the state of which he or she is a citizen must have a general income tax law at least similar in principle to the local act as to the character and source of income taxed.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Funds in taxpayers' profit-sharing plan, which were invested in U.S. government obligations, were exempt from income tax while in the plan. 31 U.S.C.A. § 3124; West's U.C.A. § 59–10–114(2)(a)(i). *Lee v. Utah State Tax Com'n*, 2013 UT 29, 304 P.3d 831 (Utah 2013).

The add-back statute's subject-to-tax exception, which excepted items of income that a corporation paid to a related member and that were subject to tax based on net income or capital imposed by Virginia or another state from the statute's requirement that a corporation add back to its taxable income the amount of any intangible expenses paid to a related member to the extent that such expenses were deductible in computing federal taxable income for Virginia purposes, applied only to the extent that royalty payments by taxpayer, a Delaware corporation that operated department stores, to a related corporation that functioned as an intangible holding company (IHC), were actually taxed by another state, i.e., the exception applied on a post-apportionment, rather than a pre-apportionment, basis. Va. Code Ann. § 58.1-402(B)(8)(a)(1). *Kohl's Department Stores, Inc. v. Virginia Department of Taxation*, 810 S.E.2d 891 (Va. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Kotterman v. Killian*, 193 Ariz. 273, 972 P.2d 606, 132 Ed. Law Rep. 938 (1999); *Reed v. Bjornson*, 191 Minn. 254, 253 N.W. 102 (1934).
- 2 §§ 362, 363.
- 3 *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973); *Iannone v. Iowa Dept. of Revenue and Finance*, 641 N.W.2d 735 (Iowa 2002); *Commissioner of Corporations and Taxation v. Rathbone*, 321 Mass. 312, 73 N.E.2d 472, 172 A.L.R. 154 (1947).
- 4 *Karlsberg v. Tax Appeals Tribunal of State*, 85 A.D.3d 1347, 925 N.Y.S.2d 237 (3d Dep't 2011), appeal dismissed, 17 N.Y.3d 900, 933 N.Y.S.2d 649, 957 N.E.2d 1153 (2011).
- 5 *Graham v. Hanna*, 297 Ga. App. 542, 677 S.E.2d 686 (2009).
- 6 *Bigelow v. Reeves*, 285 Ky. 831, 149 S.W.2d 499 (1941); *Foster v. State Tax Assessor*, 1998 ME 205, 716 A.2d 1012 (Me. 1998); *Commissioner of Corporations and Taxation v. Hornblower*, 296 Mass. 201, 5 N.E.2d 20 (1936); *Herrick v. Lindley*, 59 Ohio St. 2d 22, 13 Ohio Op. 3d 13, 391 N.E.2d 729 (1979); *Steele v. Industrial Development Bd. of the Metropolitan Government of Nashville and Davidson County*, 950 S.W.2d 345, 120 Ed. Law Rep. 860 (Tenn. 1997).
As to exemptions being strictly construed against the taxpayer, generally, see §§ 362, 363.
- 7 *Zebra Technologies Corp. v. Topinka*, 344 Ill. App. 3d 474, 278 Ill. Dec. 860, 799 N.E.2d 725 (1st Dist. 2003), as modified without opinion on denial of reh'g, (Oct. 27, 2003).
- 8 § 402.
- 9 *Director of Revenue of Missouri v. CoBank ACB*, 531 U.S. 316, 121 S. Ct. 941, 148 L. Ed. 2d 830 (2001).
- 10 *Clement v. Stone*, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

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Part Six. Income Taxes

XXI. Exempt Income and Taxpayers

§ 385. Subdivisions of state

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A municipal corporation may be taxed on income received in a proprietary capacity.¹ Thus, a city in its capacity of owner and lessor of a railroad system in a foreign state is not exempt from income taxation in the foreign state as a not-for-profit corporation, but rather, it is a foreign corporation doing business in the taxing state and as such is liable for income taxation.² A municipal corporation, however, is not otherwise liable for income taxation.³ A county housing authority established by a State for the purpose of aiding in the development, acquisition, or administration of low-rent housing or slum-clearing projects is not required to pay income taxes.⁴

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Footnotes

- ¹ [Department of Treasury v. City of Linton, 223 Ind. 363, 60 N.E.2d 948 \(1945\).](#)
- ² [City of Cincinnati, Ohio v. Commonwealth ex rel. Reeves, 292 Ky. 597, 167 S.W.2d 709 \(1942\).](#)
- ³ [State v. City of El Paso, 135 Tex. 359, 143 S.W.2d 366 \(1940\).](#)
- ⁴ [Housing Authority of Los Angeles County v. Dockweiler, 14 Cal. 2d 437, 94 P.2d 794 \(1939\).](#)

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§ 386. Retirement benefits

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Tax statutes in some states provide an exemption for federal, state, and/or local government retirees from the payment of income taxes on their pension benefits.¹ A retirement benefit taxation system that exempts certain state retirees from income tax on retirement benefits, while taxing the retirement benefits of private retirees and some public retirees, violates neither a state constitutional provision prohibiting a state from imposing on its citizenry at large an income tax structure that differs from that applied to state employees² nor the Equal Protection Clause of the United States Constitution.³ In contrast, a state system of income taxation that only exempts the receipt of state public retirement benefits for purposes of income taxation violates principles of intergovernmental tax immunity by favoring retired state and local government employees over retired federal employees.⁴ A tax scheme subjecting retirement benefits derived from private nongovernmental employment to an income tax, while exempting retirement benefits derived from governmental employment, does not violate the taxation uniformity mandate of a state constitution as the legislature's classification of governmental and nongovernmental employees' retirement benefits is reasonable under the State's broad power to classify for the purpose of taxation.⁵

In some states, the legislative grant of tax-exempt retirement benefits to persons who receive state retirement allowances is deemed to violate a provision of the state constitution that forbids the legislature from in any manner suspending or surrendering the power of taxation.⁶

Reducing or eliminating a statutory tax exemption for pension incomes does not impair any contractual obligation in violation of the state or federal constitutions where there is no language in any of the statutory tax exemption provisions indicating that the legislature intended to be contractually bound by the provisions forever and where the state constitution prohibits the legislature from contracting away its taxing authority.⁷

CUMULATIVE SUPPLEMENT

Cases:

West Virginia statute exempting from state taxation the pension benefits of certain state and local law enforcement officers, but not the federal pension benefits of retired federal marshal, violates the intergovernmental tax immunity doctrine, as codified in federal statute; although the favored class is small, the state statute expressly affords state law enforcement retirees a tax benefit that federal retirees cannot receive, there were no significant differences between federal retiree's former job responsibilities as a United States Marshal and those of tax-exempt state and local law enforcement retirees, and so state statute unlawfully discriminates against retired federal marshal because of the source of [his] pay or compensation, as forbidden by federal statute. 4 U.S.C.A. § 111; W. Va. Code Ann. § 11-21-12(c)(6). *Dawson v. Steager*, 139 S. Ct. 698 (2019).

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Footnotes

- 1 *Com. Revenue Cabinet v. Cope*, 875 S.W.2d 87 (Ky. 1994); *Christensen v. State Tax Commission*, 591 P.2d 445 (Utah 1979); *Kamps v. Wisconsin Dept. of Revenue*, 264 Wis. 2d 794, 2003 WI App 106, 663 N.W.2d 306 (Ct. App. 2003).
Any member who was vested in a state retirement plan prior to a certain date is entitled to receive a pension wholly exempt from state income tax while members who vest after that date are entitled to receive a specific amount of such pension as exempt from state income taxation. *Cashwell v. Department of State Treasurer, Retirement Systems Division*, 196 N.C. App. 81, 675 S.E.2d 73 (2009).
- 2 *Ex parte Melof*, 735 So. 2d 1172 (Ala. 1999).
- 3 *Ex parte Melof*, 735 So. 2d 1172 (Ala. 1999); *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983); *Schnorbus v. Director of Revenue*, 790 S.W.2d 241 (Mo. 1990).
- 4 *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 109 S. Ct. 1500, 103 L. Ed. 2d 891 (1989).
- 5 *Schnorbus v. Director of Revenue*, 790 S.W.2d 241 (Mo. 1990).
- 6 *Blair v. State Tax Assessor*, 485 A.2d 957 (Me. 1984).
- 7 *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich. 295, 806 N.W.2d 683 (2011).

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Part Six. Income Taxes

XXI. Exempt Income and Taxpayers

§ 387. Life insurance proceeds

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Income tax laws may contain provisions expressly exempting amounts received under a life insurance policy on account of the death of the insured.¹ The exemption may be limited to a particular class of beneficiaries² and may be applicable in favor of corporate, as well as individual, beneficiaries.³

A surviving spouse who fails to make required income tax payments cannot claim the exemption of life insurance proceeds from his or her decedent spouse from the execution of state income tax assessments.⁴

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Footnotes

- ¹ [Security Bank of Ponca City v. Oklahoma Tax Com'n, 1939 OK 363, 185 Okla. 481, 94 P.2d 552 \(1939\).](#)
- ² [State ex rel. Bolens v. Frear, 148 Wis. 456, 134 N.W. 673 \(1912\).](#)
- ³ [Security Bank of Ponca City v. Oklahoma Tax Com'n, 1939 OK 363, 185 Okla. 481, 94 P.2d 552 \(1939\).](#)
- ⁴ [Matter of Estate of Deblois, 531 N.W.2d 128 \(Iowa 1995\).](#)

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XXI. Exempt Income and Taxpayers

§ 388. Insurance companies

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Some state statutes exempt from income taxation insurance companies that are subject to a gross premium tax in the taxing state.¹ In order to fall within the exemption, the corporation must not only be empowered to do an insurance business in the state but also it must be actually engaged therein.² Insurance companies may be exempted from income taxation, without creating an unconstitutional discrimination, where they are separately subjected to other taxes.³

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Footnotes

- 1 [Mortgage Corp. of New York v. Graves](#), 262 A.D. 421, 29 N.Y.S.2d 80 (3d Dep't 1941); [Nord v. Connecticut Gen. Life Ins. Co.](#), 71 S.D. 1, 20 N.W.2d 403 (1945).
- 2 [Mortgage Corp. of New York v. Graves](#), 262 A.D. 421, 29 N.Y.S.2d 80 (3d Dep't 1941).
- 3 [Miles v. Department of Treasury](#), 209 Ind. 172, 199 N.E. 372 (1935).

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XXI. Exempt Income and Taxpayers

§ 389. Nonprofit organizations

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Statutes frequently exempt from income taxation certain organizations with agricultural, educational, religious, charitable, scientific, or similar objectives where no part of their net earnings inure to the benefit of any private shareholder or individual.¹ The exemption is made in recognition of the benefit that the public derives from the fulfillment of these objectives and is intended to aid them when such activities are not conducted for private gain.² The requirements of these statutes, that the organization seeking exemption must exist exclusively for one of the above objectives and that the earnings must not go for the benefit of any private person, constitute separate conditions precedent to exemption, both of which must be met.³ The exemption must be denied if the dominant motive of the taxpayer is primarily to benefit the taxpayer's membership economically and only incidentally to further the larger public welfare,⁴ and this is the case even though the organization pays no dividends or devotes its entire profits to charity.⁵ A corporation whose net earnings inure to the benefit of a charitable institution, but whose charter authorizes it to engage in commercial enterprises, is not entitled to exemption from income tax as a corporation organized and operated exclusively for charitable purposes.⁶ The income from investments used in carrying out the purposes of a corporation organized and operated for charitable, religious, or educational purposes, however, does not constitute transacting business for profit so as to preclude the corporation from exemption from paying state income taxes.⁷

The fact that the Internal Revenue Service has determined that a given organization is exempt from federal income tax is not controlling in an adjudication of the question whether the income of the organization is subject to state income taxation.⁸

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Footnotes

- 1 Midwest Solvents Co. v. State Commission of Revenue and Taxation, 183 Kan. 104, 325 P.2d 311 (1958);
Petition of Vanderbilt University, 252 N.C. 743, 114 S.E.2d 655 (1960); York County Fair Ass'n v. South
Carolina Tax Commission, 249 S.C. 337, 154 S.E.2d 361 (1967).
- 2 Joseph P. Kennedy, Jr., Foundation v. Oklahoma Tax Commission, 1961 OK 46, 360 P.2d 243 (Okla. 1961).
- 3 Midwest Solvents Co. v. State Commission of Revenue and Taxation, 183 Kan. 104, 325 P.2d 311 (1958);
Oregon Physicians' Service v. Horn, 220 Or. 487, 349 P.2d 831 (1960).
- 4 Oregon Physicians' Service v. Horn, 220 Or. 487, 349 P.2d 831 (1960).
- 5 Oregon Physicians' Service v. Horn, 220 Or. 487, 349 P.2d 831 (1960).
- 6 Midwest Solvents Co. v. State Commission of Revenue and Taxation, 183 Kan. 104, 325 P.2d 311 (1958).
- 7 Joseph P. Kennedy, Jr., Foundation v. Oklahoma Tax Commission, 1961 OK 46, 360 P.2d 243 (Okla. 1961).
- 8 Oregon Physicians' Service v. Horn, 220 Or. 487, 349 P.2d 831 (1960).

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